THE DESIGNS BILL, 1999

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Now, Dr. Raman to move the Motion for consideration of the Designs Bill, 1999.

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (DR. RAMAN): I move:

> "That the Bill to consolidate and amend the law relating to protection of designs, be taken into consideration. "

यह प्रस्ताव, सदन के सामने डिजाइन विधेयक, 1911 को रद्द करने तथा प्रतिस्थापन किये जाने पर विचार किये जाने और डिजाइन विधेयक, 1999 नामक एक नये कानून को बनाने के संबंध में है । सरकार की पहल डिजाइन कानून को आधुनिक बनाने के संबंध में है ताकि नवीनता तथा मैक्रो स्तर में बदलाव लाकर मौलिक क्रियाकलापों को प्रोत्साहित किया जा सके और इसे अन्य कानूनों के अनुरूप बनाया जा सके ।

माननीय सदस्य इस बात से सहमत होंगे कि विश्व फोरम में, डब्ल्यु.टी.ओ. में अपने उद्देश्यों की प्राप्ति हेतु भारत को एक मजबूत स्थिति हासिल करनी पड़ेगी । ट्रिप्स, डब्ल्यु.टी.ओ. के कई करारों का एक भाग है ।

भारत में पंजीकरण और डिजाइन की सुरक्षा के संबंध में कानून के रूप में डिजाइन अधिनियम, 1911 है । इस कानून के लागू होने के 9 दशकों के बाद भी इस अधिनियम में एक बार भी संशोधन नहीं किया गया है । इस अवधि में प्रौद्योगिकी में काफी परिवर्तन आया है, जो कि विज्ञान और इंजीनियरी में उन्नति होने के कारण आया है। । ट्रिप्स करार के कारण भी यह आवश्यकता हुई है कि कानून में कुछ संशोधन किया जाए । पैरिस कन्वेन्शन में शामिल होने के पश्चात् भारत को इस विधेयक में कुछ संशोधन करना अनिवार्य हो गया है । वर्तमान कानून को विश्व स्तर की घटनाओं के अनुरूप संशोधन करना देश के लिए हितकारी है ।

महोदय, प्रस्तावित विधेयक में डिजाइन से संबंधित कानून में संशोधन तथा प्रतिस्थापना करने का प्रस्ताव है ताकि डिज़ाइन क्रियाकलापों को बेहतर सुरक्षा प्रदान की जा सके । चूंकि यह एक प्रतिस्थापन विधेयक

है, अतः 1911 के अधिनियम को रद्द कर दिया जाएगा और इस विधेयक द्वारा प्रतिस्थापित कर दिया जाएगा । डिजाइन किसी वस्तु के बाहरी आकार या साज-सज्जा से संबंधित है । किसी भी औद्योगिक प्रक्रिया से तैयार वस्तु और आकर्षक होनी चाहिये । उपसभाध्यक्ष महोदय, इस विधेयक की मुख्य विशेषताएं हैं, मूल की परिभाषा देना, गैर पंजीकरणीय डिजाइनों की शिनाख्त की व्यवस्था, प्रशासनिक उपायों को सरल और उपभोक्ता अनुकूल बनाया जा रहा है, कम्प्यूटर पर डिजाइन आबंटन रजिस्टर की व्यवस्था की गई है, दंड को बढ़ाया गया है, नियंत्रक को शक्तियां प्रदान की गई हैं । महोदय, मैं इस विधेयक पर विचार किये जाने हेतु सम्मानित सदस्यों का समर्थन चाहता हूं ताकि इस संबंध में आपके बहुमूल्य विचार आ सकें । जो सम्मानित माननीय सदस्य यहां पर अपने विचार देने वाले हैं, मैं उनके विचारों को आमन्त्रित करता हूं ।

The question was proposed

THE VICE-CHAIRMAN(SHRI ADHIK SHIRODKAR): Thank you, Dr. Raman. There is one amendment, by Shri Bratin Sengupta. He is not present. So, the amendment is not moved. The Motion for consideration of the Designs Bill,1999 is now open for discussion. Shri Pranab Mukherjee.

SHRI PRANAB MUKHERJEE (West Bengal) : Sir, so far as this Bill is concerned, it is in connection with the WTO related Intellectual Property Rights. Sir, so far as this Bill is concerned, it is in connection with the WTO-related Intellectual Property Rights. All the pieces of legislation to protect intellectual property were enacted in this country long ago. One such piece of legislation is the Designs Act which was enacted in this country in 1911. Of course, in the process of industrialisation many other industrially developed countries provided adequate protection to the industrial designs, drawings, and protected the right of the designer by ensuring adequate legal safety. We didn't have such a right and, therefore, these 48 clauses have been incorporated in this Bill. Out of these, quite a number of clauses are new and these new clauses have been inserted keeping in view the changes which have taken place over the years. Certain clauses relating to sections such as 43 and 45 of the old Act have also been redefined in the context of the new situation and they have been modified and incorporated in the relevant clauses of the Amending Bill.

As the amendments are far-reaching in nature and very wide in range, perhaps, the Minister thought that, instead of enumerating the various sections of the old Act and making the amended portion larger than the original portion, it would be better to suggest in the concluding clause, that is, clause 48, and rightly so, that let the old Act be repealed and it be replaced by the new Act. Therefore, technically, with the basic objective I have no quarrel.

But only on two points I would like to request the hon. Minister to keep the interest of the Indian designers protected. One is the role of the Controller. Now, in the other two Bills related to intellectual property, the Trade Mark Bill and the Copyright Bill, which we have passed, and even in the Patent Act--whether it will be passed or sent to a Select Committee is a matter to be decided by the House--what we feel is that the Controller is saddled with too many powers. Too many legislations are entrusted to the Controllers. Naturally, he will have to delegate his authorities to his subordinates. In this process of delegation of authority, if the administration is not very careful and if it is done in the normal routine way--most of these things will be done by framing rules and occasionally, maybe, it may be subjected to the scrutiny of the Committees of the Parliament on Subordinate Legislation, more often they will not be scrutinised--there will be a lot of problems. So, from that point of view, what I suggest is that while framing the rules the Government has to be extremely careful.

The second point on which I would like to draw the attention of the hon. Minister is that, nowadays, as we are also copying various designs, there is a tendency of copying the designs. Certain timeframe has been given in the relevant provisions of the Act that even the old designs, after renewal, can be registered and once they are being registered, protection will be made available to those designers. So, this should be clearly spelt out. If the hon. Minister, in the course of his reply, can explain the position, it would be better. I thought that at the introductory stage itself he would explain this. But he has not explained it in detail. After the designs registered with the Registrar, after they are updated through computerisation, what measures will be taken to prevent their copying? With a little alteration they can be copied by others and certain registrations can take place in other countries. At least, from the plain reading I couldn't understand it. I request the hon. Minister to clarify this position.

Now, this Bill is a technical Bill. But, nontheless, this type of legislations are needed to protect the interests of our designers. At some point of time, we thought that intellectual property was the concern of the industrially advanced countries.

It is not so. The type of debate which we have raised in this country is, our point of view is almost fixed, that somebody through the process of research and design will invent something, we will copy it, then we will go through the process of reverse engineering and, thereafter, at a less cost we will take advantage of the technological upgradation. That type of method might have been relevant at some point of time, but need not necessarily be relevant today. This is one area where I feel, we do have adequate competence and our domestic legislation should be enacted in conjunction with the international agreement and international standards and practice so that we can have that advantage. Take the case of classifications. The classifications which were made in the 1911 Act cannot have relevance today. The classifications which we made in the early 50's cannot have any relevance today because the technological changes and upgradation, which have taken place over the years have no relevance in today's context. Therefore, I feel, the necessary changes which have been brought in this particular Designs Bill, should be in confirmity with this. But while making the rules - because a lot of rule-making provisions have been made under the main clause - the Government should be careful so that the rights of our designers are well protected.

SHRI GOPALSINH G. SOLANKI (Gujarat): Sir, this Bill, when passed, will replace the Designs Act, 1911. The Bill, at the same time, has also been modified. The previous Act had about 78 sections. Now it has been reduced to 48 sections, incorporating some new sections also. These are, particularly, 4, 6, 7, 8, 12, 13, 14, 45 and 46. They have been revised, with a new procedure. For example, clause 4 relates to the prohibition of registration of certain designs; clause 6 relates to registration in respect of a particular article; clause 7 deals with the publication of particulars of registered designs, which shall allow publications of the design as soon as the design is registered and thereafter the design shall be open to public inspection; clause 8 is also a new clause and deals with the power of the Controller to make orders regarding substitution of application, etc.; clause 12 deals with the restoration of lapsed designs; clause 13 deals with the

procedure for disposal of applications in respect of restoration of lapsed designs; clause 14 provides the rights of proprietor of lapsed design which have been restored; and clause 45 is also a new clause requiring the Central Government to place before both Houses of Parliament once a year report respecting the execution of this Act by or under the Controller. It is a good legislation, Sir, so far as the new provisions are concerned.

It corresponds to the provisions relating to protection of security of India available under the Patent Act, 1970. At the same time, it has been amended. It gives the right to prior advertisements also. I would like to draw the attention of the House to the procedure that an appeal should lie ina court, not below a Sessions Court. I don't want to go into the details because I am supporting this Bill. This provision enables the litigants to go before the District Judge and file an appeal. It will create a war tendency in the judiciary. The fine or the penalty, which is going to be awarded, will be Rs. 25,000/-. It has been increased from Rs. 500/- to Rs. 25,000/-. The maximum penalty would be just Rs. 50,000/-. If such suits are to be filed, a Senior Division Civil Court, according to the settled norms throughout the nation, could try them. Sir, you yourself are very much accustomed with the procedure. You know that the civil proceedings take a lot of time. It will be nothing but shear wastage of manpower and money so far as the judicial functioning of a District Court is concerned. I would suggest that such suits should be filed before the Senior Division Civil Court and then it could be treated as a special case or a special civil suit. At the same time, the fine, which is going to be imposed or awarded for infringement of designs, is enhanced from Rs.500/- to Rs. 25,000/- and from Rs. 2,000/- to Rs. 50,000/-. I would like to say that it is not enough. It is not that the designs once registered before the Controller-General will not be copied. I would like to quote my experience. Sir, I purchased a Maruti car in 1986. The car met with an accident and one of its doors got damaged. I got an estimate for the repair of the car. Sir, you will be surprised to knowthat for the repair of one door of that car which I purchased for Rs. 52,000, he gave an estimate of Rs. 28,000. They said that they would fabricate the same door and then replace it. This is what is going on. Sir, take the case of scooter parts, motorcycle parts or any other machinery. They manufacture whatever parts; the very next day you can find same kind of parts in every market. Could it be said that it is a registered design? Could it be prevented? Of course, this Act is going to be a coordinated Act with the

Copyright Act, Patent Act and the Trade and Merchandise Marks Act. I don't deny it. But copying is going to prevail in all the markets. It may come from Japan to India or it may go from India to UK and USA. What has to be done to protect the indigenous designs in India is to give a particular registration, which cannot be copied so that the genuine parts could be protected. Sir, it is a very comprehensive Bill. Somebody said that it was a short Bill. It is not a short Bill. Many sections have been amalgamated. For example, Section 3 has been brought into Clause 22. It is a combination of two sections. Sir, I remember those days when I started my practice in the year 1972. There were many sections in the Criminal Procedure Code. But later on all the sections were amalgamated.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): In 1973.

SHRI GOPALSINH G. SOLANKI: This Act was amended in 1973. Sir, there is no new technicality in this Bill. At the same time, I would say that this is a comprehensive Bill which is going to empower the Appellate Authority; instead of giving powers to the Controller or to the Central Government itself, it would necessitate going to the judiciary, namely, the High Courts. Therefore, there will be some judicial interference, -- justice will be there -- instead of the authority being in the hands of the Central Government or the bureaucracy. Therefore, I support the Bill.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I believe that the suggestion of Shri Solanki, who is a senior member of the Council, regarding vesting of the jurisdiction not in City Civil Courts, but in the hands of a judicial magistrate, is a very good suggestion, and it is worth-considering. Now, Shri Suresh A. Keswani.

SHRI SURESH A. KESWANI (Maharashtra): Sir, thank you for giving me time to speak on this important Bill. As Pranabda mentioned right in the beginning regarding the apprehensions in the minds of some Members, after all, this is not a new measure. This Bill seeks to replace the old and the existing Bill of 1911, and it only goes to show that this country had recognised the existence of the right to intellectual property way back in 1911 itself, just when the world was about to get ready for the First World War. The aftermath of industrial revolution brought about a new concept, that those nations which spent enormous amount of time and money -- enormous amount of wealth both in terms of financial and human resources

-- and their intellectual investments in certain new technologies, in certain new areas, cannot possibly get their returns in the short run. And, therefore, the humanity, internationally, at all levels, must seek to find ways to protect these property rights, which are rightly called the intellectual property rights, in order to safeguard the interests of those who are undertaking this sacrifice for the pursuit of excellence to which the humanity has endowed itself right from the beginning of this century. We, in this country, have still been struggling with our property laws. Our fundamental rights today do not include adequately the fundamental right to property in the same way as it is understood in the Western world. Money has been recognised as a store of value. Money has been recognised as something in which we collect the sweat and hard work that we put through the ages, and we want to store that money in some form so that we can pass it on to our progeny. This store of value basically reposed itself in the system of property that was invented at the time when the economics of Adam Smith, which popularly was known as Laissez Faire economics, made its beginning in the civilised world.

The fundamental right to property and the protection under this fundamental right, especially in a case where a property was sought to be taken over for any public purpose, meant that there was an obligation on the part of the Government to ensure that the person, whose property was being taken over, was adequately compensated at the market rate and also that an impression was not left that the laws which the country made were confiscatory in nature. That was the golden rule behind the fundamental right to property. We have yet to develop ourselves because half of our population still lives below the poverty line. There are areas where we have not been able to provide even drinking water. We have not been able to secure the fundament right of existence for a large number of population. In such a country where a question-mark has been put on the right to property, you suddenly find yourself in a situation where you have to grapple with a new proposition like the right to intellectual property. Does it fit in with the scheme of things as are enshrined in our Constitution, a Constitution which is based on democratic socialism, under which we all have equal opportunities and wherein we provide equal opportunities to every one who takes birth in this country? Before I proceed further, I will bring myself back to the Bill.

The Intellectual Property Right is perhaps more relevant today to Indian conditions, Indian technocrats and Indian enterpreneurs because acceptably and demonstrably, we do not possess such assets in the world which have a significant property value, except what we are likely to get during the course of the information age. It is well known that our technocrats are making strides. They are expanding in the areas of information technology. They have attained the heights which none of our industrial empires have been able to, in the international arena. If we extend this kind of protection and provide laws which protect our people, possibly, we will be creating a situation where our own designers, our own technocrats, would be able to secure for themselves a future and their properties would not stand confiscated by the laws of the country. Sir, I wish to submit that the world is changing. The presence of Indians in the international market place is increasing significantly. The geographical boundaries are slowly receding. Currencies like Mark or Lira or Franc are slowly going into the background and new currencies known as the Euro and so on, and new economic units, are coming into existence. The trade barriers are slowly being withdrawn. The World Trade Organisation is threatening to become far more effective than the GATT or the Uruguay Round or any of its predecessors. Gradually, a situation is emerging where the whole world, the entire globe, is becoming a market place and the corporations are using the racial or the geographical bias.

Acquisitions and mergers have become the order of the day. The multinationals have lost their identity as to where they originally belong. They seem to belong to everywhere. The ownership of a corporation and its management are being separated. The shareholders who are owning these corporations are spread throughout the world, and those who are working as chief executive officers or those who are making the policies in these corporations are technocrats and professionals chosen from the whole world. In this kind of a scenario where the corporations don't have any racial or geographical bias, all the laws which restrict trade are losing relevance. The world is becoming an open market. In such a situation, the only thing which can protect the rights of individuals, rights of those who wish to safeguard their property rights, are Acts such as this one.

Sir, therefore, while saying that all safeguards are necessary, I would say, we have to make sure that this kind of a Bill does not get passed

in a hurry; that we examine it in all its details; yet one must make sure that these laws take effect as quickly as possible.

The safeguards will have to be provided. I don't know whether the Indian judicial system which is not a part of this law is capable of understanding, comprehending and responding to the needs of the time. Sir, you have been a veteran and you have spent most of your life in front of the judges, and you know very well the handicaps it suffers from. I am referring to something like the Bhopal gas tragedy. The same kind of thing, if it had been tried in any court internationally, those who suffered would have received far greater compensation long back, compared to what is happening to the victims of that tragedy. So, even if we have these kind of laws, the international industrial empire would want to make use of the Indian judicial system to deny the rights which should normally accrue to the Indian intellectuals and technocrats whom we are seeking to protect through these laws.

Sir, a final word of caution. It takes me back 200 years when Lord Wellesly had introduced a system of expansion via the subsidiary treaties. Various principalities in India, some 500 - 600 principalities, were made to sign a variety of agreements. These agreements were thought to be very innocent kind of things, something similar to this legislation. They were thought to be instruments which provided security and sovereignty to those kings of principalities who were signing these agreements. Eventually, that led to the total take-over of India, and in a very short time, in 1857, we had Queen Victoria coming and proclaiming this country to be their country. There is a great apprehension in the minds of the people that via these kind of legislations, is it possible that the new field of chattel, i.e., the WTO, is going to be used to subjugate countries like ours. Therefore, we will have to be totally vigilant on this front and ensure the safety of our empire which we are building so assiduously. Sir, I thank you very much for giving me time, and I once again request the House to pass this Bill.

SHRI VAYALAR RAVI (Kerala): Mr.Vice-Chairman, Sir, I am not going to make a big speech and as I rise, I remember an old comment of a former Minister of Kerala, who was a Member of the other House also, late C.S. Mohammed Koya; criticising the then Government in Kerala: "This Government is passing legislations like making dosas, very fast." For the last one week, I feel, a lot of dosas have been made in this House. Bills are

passed so fast. Mr. Rajagopalan is here and he has a good taste for dosas. He is very fond of dosas in Kerala.

This Bill is a highly technical one. I admit the reality and the fact that we have to pass this legislation as there is an international obligation because we are a signatory to the WTO. I am not disputing that point. At the same time, I wish even the Chair to make an observation to the Minister, "When you bring forward Bills in this House, they must cooperate." If necessary, they can take the advice of the technocrats. I am saying this with regard to only this Bill. You may remember, Sir, we passed two Bills and I raised some questions. But I could not get a satisfactory answer. I did not pursue because they were to be passed. Here also, Sir, I am only pointing out certain provisions which are not in good tune in this Bill.

As a lawyer, I can understand. Some time before, my friend, Mr. Keswani was making some observations with regard to intellectual property rights. I want to comment on where the dispute lies. There are reports. There are many conventions on all the eight items, like the Paris Convention. There are institutions which deal with them too. The dispute or controversy arises only when they become part of the WTO or when they come under the umbrella of the WTO. 'The WTO emerged a Frankenstein dictating terms to other countries. The IPR is an issue for a long time. Yes, but there is some kind of understanding. But when it became a punitive muscle or a part of the WTO, it becomes controversial. Then there is controversy. I stop at that. I do not want to go further and you know the problem.

Sir, as a lawyer, I take one or two points. Section 34, at page 10, says: "The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Central Government for directions in the matter." Sir, according to me, this itself is defeating the provisions. You are appointing a Controller-General of Patents, Trade Marks and Design. Under him there is another person, Controller. Naturally, you appoint a technocrat for that. You appoint a person who has the knowledge of the subject as well as law. If this provision can be used, it can stretch to any extent. This can be quoted by even a superintendent or UDC or LDC. He may ask: "Why did you make this action? If you have any doubt, there is a provision which says that you have to refer it to the Government." It means, you are giving room for your Secretariats to intervene in the functioning of the execution. It is not a good

clause. When you give an authority to an institution, why do you want a clause like this then? If you have a doubt, it can be interpreted in different ways. The Government Secretary can say: "We feel that a wrong thing has been done and it is a doubtful matter and hence we refer it according to the law." This provision, I believe, is not good for this kind of enactment. You are trying to vest more powers in the bureaucracy. It is not feasible. This Bill is removed in this House and then it will go to the Lok Sabha. The Minister can definitely move some amendments on certain provisions which I have pointed out, with your permission. This is one clause which, I thought, is unwanted.

As a lawyer we have professional interests and I do not like to say it here. It is with regard to Clause 36. There is an appeal to the High Court. The appellate authority is the High Court. There is a reference to judicial review. Whether Parliament likes it or not, every enactment is subject to judicial review, you know that. Even the actions of the Speaker are under judicial review now, under Anti-Defection Law. In this country, no enactment can escape the eyes of the judiciary. You look at Clause 36 (3).

Sir, clause 36 (3) states, "The High Court, if thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the High Court shall be final." We are wise enough to give concessions to the judiciary. I do not understand this kind of a thing. Do you think that the High Court is going to decide as to which law is not good? I do not understand this kind of words. It means that the judges are to depend on experts. But, here I am on a different point. It further says, "The decision of the High Court shall be final." Can this Parliament not say that there is no scope for judicial review in the case of this Bill? The former Judge is sitting here. He also pointed out the same thing to me. Sir, you know very well article 136 of the Constitution which says, "Special leave to appeal by the Supreme Court - (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decrees, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India." Can this Parliament pass a law under article 136? I am raising a basic question. I should object the Bill if it goes ultra vires the Constitution. Therefore, I need an explanation from the Minister with regard to the need of clause 36 (3) in this Bill. Yes, you can say that the High Court is an appellate authority. But what is the need of mentioning that the High Court may call

experts so that they are able to understand the things and decide? Why do you want the judiciary to do what you want it to do? They are competent enough to decide as to what should be done in such cases. It looks like a bad law because you are giving some kind of a direction to the judiciary. You cannot see the fate of a complainant whether he should go to the Supreme Court. Sir, article 136 gives me that right. Lastly, Sir, I would come to clause 44 at page 13, which shows the mindset of the Government or the inheritance of bureaucracy. No. It says, "Any person who has applied for protection for any design in the United Kingdom of any of other Convention countries or group of countries or countries which are members of inter-governmental organisation..." I stop here. I understand the explanation given here on page 24. I accept it. It states, "This clause corresponds to section 78A of the existing Act relating to reciprocal arrangements with the United Kingdom and other Commonwealth countries. The provision is proposed to be extended to countries which are members of any group of countries or inter-governmental organisations. The existing Act provides priority to the United Kingdom and other commonwealth Countries, but in view of India's accession to the Paris Convention and India being a signatory to the World Trade Organisation (WTO), the same has been modified by this clause so that the right to priority can be extended to the Convention countries and Inter-Governmental Organisations. Sir, what is the need of mentioning the United Kingdom when it is also a signatory to the WTO and is a Convention country? It is the mindset of an old system. I would not say that it is slavery, but there is that kind of thinking. Why do you put here the name of the United Kingdom specifically? I wish the Minister to explain it. He might have prepared a written speech because it is a highly technical matter. I am very glad about it. While replying to the debate, he should cover this point also as to what is the necessity of mentioning the name of U.K. I would request him to see whether the name of the United Kingdom can be deleted. I would like to know the reasons as to why the name of the United Kingdom cannot be deleted when it is a Convention country. What is the necessity of carrying the provision of the Act of 1911 by mentioning the name of the United Kingdom because all these provisions are applicable to all the countries?

This is applicable to all countries - conventional countries and the signatories to the W.T.O. - according to the explanation given. I approve it.

I accept it.*(Interruptions)* it is correct. It is not limited to the U.K. alone. It is applicable to all. What is the necessity to mention the name of any other country - the U.K. - in our law? Then, it goes on mentioning the name of the U.K. under sub-clause 4 of clause 44. The point is, there is no legislature in the U.K. There is Parliament in the U.K. but not 'legislature.' At least, the Minister could have used a good word. Sir, you just look at it. It says, "Where it is made to appear to the Central Government that the legislature of the U.K..." It is the Parliament that is there but not the legislature of the U.K. There is no legislature. There, they have the Parliament. We have legislatures in the States. But, we never call our Parliament as legislature. We call it as Parliament. A proper word has not been used. I wish the hon. Minister read this Bill before the same is introduced in the House. I wish, he read it properly. Anyhow, I do not want to accuse him. The time is very limited. Even we could not read and study the Bill properly. It is highly technical. It is difficult for him also. I do not want to accuse him for that. I want an explanation from the hon. Minister on the points which have been raised by me. If he feels that I am right, he himself can move the amendments with the permission of the Chair. I strongly object to the mentioning of the name of the United Kingdom without any reason. It is not necessary at all. And, you are limiting the scope of an appeal to the Supreme Court. It is a bad law. It is against the Constitution and I wish that the hon. Minister may look into it and explain and, if necessary, move the amendments. Thank you.

SHRI RANGANATH MISRA (Orissa): I would just like to mention a point. Sir, clause 36, sub-clause (1) says, "Where an appeal is declared by this Act..." It is a wrong way of looking at it. It has never been done that way. It is to be like this, "Where an appeal is provided under the Act to the High Court...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR). The phraseology is uncomfortable.

SHRI RANGANATH MISRA: Yes. It is very uncomfortable.

THE VICE- CHAIRMAN (SHRI ADHIK SHIRODKAR) : I hope the Minister will kindly look into it. The phraseology is totally different from the normal phraseology we have.

SHRI RANGANATH MISRA: A provision could be added for the

condonation of limitation. Sir, clause 5 could be made applicable to the appeal. That is normally done. The following can be added in clause 36: "Where an appeal is provided under this Act to the High Court from the order of the Controller, such appeals shall lie within three months." Sir, the language may be changed. In sub-clause 2 or 3, we may provide that Section 5 of the Limitation Act be applied.

THE VICE - CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Ravi, your repeated reference to me as a lawyer, is making me home-sick.

SHRI VAYALAR RAVI: I am only a lawyer for namesake.

DR. RAJA RAMANNA (Nominated) : Sir, I have a very small comment. This refers to clause 59. For the words, "degree of any university", the words, "degree in science, engineering or technology from any university" shall be substituted. I think, the hon. Minister will do wise to put medicine also in it *i.e.*, doctors in the pharmaceutical business. We have a lot of patent business. We should also have medical people in it, if it is all right. That is all. Thank you.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Coming from a doctor, other than medicine, it is a wonderful suggestion.

डॉ. रमन : सर,अभी सम्माननीय सदस्य श्री प्रणब मुखर्जी, श्री गोपाल सिंह सोलंकी, श्री सुरेश केसवानी, श्री वायालार रवि जी और श्री रंगनाथ मिश्र जी ने इस विषय पर गंभीरतापूर्वक अपने विचार प्रकट किए। माननीय प्रणब मुखर्जी और माननीय सदस्यों ने इस डिजाइन बिल पर जो कि खासतौर से 1911 का बिल है, इसमें संशोधन की आवश्यकता है पर, विचार और सुझाव की आवश्यकता पर है, अपने महत्वपूर्ण प्रचार प्रकट किए हैं। मैं इस सदन में, इस विषय पर अपना पूरा प्रयास करूंगा कि माननीय सदस्यों के विचारों पर स्पष्टीकरण दे सकूं। 1911 से लेकर अब तक डिजाइन के क्षेत्र में, प्रौद्योगिकी के क्षेत्र में, नई तकनीकी लागू होने के बाद बहुत सारे परिवर्तन आ गए हैं। और उसके अनुरूप ही हम अपने कानून बनाएं इस संबंध में हमारे प्रयास इस बिल के रूप में आए हैं । माननीय प्रणव मुखर्जी ने जो विषय रखा सबसे पहले में इसके लिए उन्हें धन्यवाद देना चाहता हूं क्योंकि उन्होंने अपनी चर्चा के दौरान जो विषय और विचार रखे वे इस बिल और मेरे

लिए भी काफी उत्साहजनक हैं । I thank Shri Pranab Mukherjee for supporting the Bill. I would like to assure him that the rules would be framed carefully and the delegation of power would also be examined carefully. I do agree that the classification system needs to be changed. उसमें उन्होंने जो विचार रखा है वह भी काफी व्यावहारिक है । The present system of classification consists of 14 clauses in its schedule appended to the rules under the Act. The existing classification is based on the substance of manufacture. For example, if an item is made both of plastic and metal, it will figure under two separate clauses, even though it is a single item. Due to an increase in the use of different substances for the manufacture of the same product, a user is presently required to set a classification in different clauses in order to secure a strong legal defence against ill-treatment. इस विषय में क्लासिफिकेशन और डेलिगेशन ऑफ पावर के संबंध में माननीय मुखर्जी साहब ने जो विचार रखे और उनके बाद श्री गोपाल सिंह जी, जो हमारे एक विद्वान सदस्य हैं, उन्होंने कहा कि appeal to the district court and that the amount of fund is not enough and, therefore, it should be increased इस विषय में अपने विचार रखे । मैं माननीय सदस्य से निवेदन करना चाहता हूं कि It is proposed to enhance the penalty from a minimum of Rs.500, to a maximum of Rs.1,000 to Rs. 25,000 and Rs.50,000 respectively for an offence in order to provide a strong deterrent. इस विषय में मैं विचार व्यक्त करना चाहता हूं, जो पेनल्टी बढ़ाने के संबंध में विचार है इसमें संख्या 25,000 से बढ़ाकर 50,000 तक की गई है क्योंकि 1911 के जो प्रोविजन्स थे उसके तहत 90 साल के अंतराल में काफी परिवर्तन आ गया है और यह 50,000 की जो राशि रखी गई है यह बहुत है, पर्याप्त है । हमारे सम्माननीय श्री सुरेश केसवानी जी ने इस पर अपनी बात रखीं और चिंता व्यक्त की कि इस प्रकार के नये कानून से कहीं हम देश को गुलाम तो नहीं बना रहे हैं । डब्ल्यू.टी.ओ. एग्रीमेंट के बाद ट्रिप्स के जो मेंडेटरी प्रोविजन हैं उन पर हमें चर्चा करके पूरा करना है । 1 जनवरी, 2000 तक जो नियम बना लेने हैं, उसके तहत ही ये आशंकाएं आ रही हैं । इसमें हमारे हिंदुस्तान के गुलाम होने का कोई विषय नहीं है । इसमें हम दुनिया के सारे कानूनों की समीक्षा कर अपने कानून को मजबूती देने का प्रयास कर रहे हैं क्योंकि हमें अपनी जगह बनानी है इसलिए हमें अपने

कानूनों का उदारीकरण करना पड़ेगा । उसी उदारीकरण के लिए ये सारे परिवर्तन, संशोधन किए जा रहे हैं । इसी दिशा में हिंदुस्तान के कानून और हमारे नियमों में संशोधन हो रहा है । इससे हमारी मजबूती बढ़ेगी ।

श्री सुरेश केसवानी जी ने लीगल सिस्टम डीलिंग के लिए जो चिंता व्यक्त की है उसके लिए मैं अपने माननीय साथी से निवेदन करूंगा कि उनकी चिंता जब सरकारी तौर पर आएगी तो इसको और अच्छे ढंग से समाहित करने का प्रयास किया जाए गा ।

एक प्रश्न श्री वी. रवि साहब ने काफी गंभीरता से उठाया । What is the need to refer to United Kin2gdom. उपसभाध्यक्ष इस संबंध में मैं बताना चाहता हूं कि United Kingdom is governed by a separate agreement, hence it is included. The names of other countries are there because of the Paris Convention. ये जो दो विषय हैं, इसके विषय में उन्होंने जो यूनाइटेड किंगडम के साथ चिंता व्यक्त की थी, इसके विषय में मैंने कहा था कि यूनाइटेड किंगडम के साथ सेपेरेट एंग्रीमेंट है। Hence it is included. उनकी चिंता को ध्यान में रखा जा रहा है । इसमें जो उन्होंने चिंता व्यक्त की है, उसे ध्यान में रखा जा रहा है । रवि जी ने पावर आफ ज्यूडिशियल रिव्यु के बारे में अपनी चिंता व्यक्त की है which only provides for an association of the experts with the judicial process. इसमें सारे विषयों पर विचार विमर्श कर के, जिन्होंने इस ज्युडिशियरी के क्षेत्र में सुझाव दिये हैं, और सारे विषयों में आपके जो सुझाव हैं, मैं उन सारे सुझावों का सम्मान करते हुए माननीय सदस्यों से आग्रह करूंगा चूंकि यह सारे प्रावधान, नियम जो इस बिल में हैं, ट्रिप्स के एग्रीमेंट के तहत सन् 2000 तक इनका प्रावधान करना मेंडेटरी है, अतः मैं सभी माननीय सदस्यों से आग्रह करूंगा कि इस बिल को इस सदन में पास किया जाए ।

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : Now, I will put the motion to vote.

The question is :

"That the Bill to consolidate and amend the law relating to protection of designs, be taken into consideration."

The motion was adopted.

SHRI VAYALAR RAVI : Sir, one hon. Member has made some suggestions regarding some legal ....

THE VICE-CHAIRMAN(SHRI ADHIK SHIRODKAR) : There is one reference regarding the langauge. Kindly keep that in mind. Now that we have started the process,the appeal should lie because that is question of bad phraseology which is not available in any of the enactments, to the best of my knowledge. Dr. Raman, kindly take care of that phraseology.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): We shall now take up clause-by- clause consideration of the Bill.

Clauses 2 to 48 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

DR. RAMAN : Sir, I beg to move :

"That the Bill be passed"

The question was put and the motion was adopted.

THE APPROPRIATION (RAILWAYS) No. 4 BILL, 1999

THE MINISTER OF RAILWAYS (KUMARI MAMATA BANERJEE) : Sir, I beg to move :

"That the Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1999-2000 for the purpose of Railways, as passed by Lok Sabha, be taken into consideration."

The question was proposed.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : Shri Janardhana Poojary, there are 7 speakers from your party and the time allocated to your party is 45 minutes. It is an internal adjustment.

SHRI JANARDHANA POOJARY (Karnataka) : Sir, at the very outset, I support this Bill to authorise the payment and appropriation of certain sums from and out of the Consolidated Fund of India for the services of the financial year 1999-2000. Sir, it is my privilege to initiate the discussion on this Bill. In fact, Sir, for the first time in the history of the